

APPENDIX C:
COMMENTS RECEIVED
(Ordered by Year Judgment Entered)

U.S. v. LYMAN GUN SIGHT CORPORATION, ET AL.

Civil No.: 890-56

Year Judgment Entered: 1957

From: sneyeper@revahs.com
To: [ATR-JudgmentTerminationComments](#)
Subject: U.S v. Lyman Gun Sight Corp., et al.: Docket No.: 890-56"
Date: Wednesday, April 25, 2018 12:47:13 PM

Termination of this judgement may as well be granted. This judgment has not been enforceable for many years due to the reorganization of Lyman and Weaver to circumvent the wording of this judgment. Then, when focus was not on these types of business practices and fixed sales to specific distributors became accepted practice, they went right back to the same policy.

v/r,

Jeffrey Shaver

U.S. v. AMERICAN INSTITUTE OF ARCHITECTS

Civil No.: 992-72

Year Judgment Entered: 1972

From: [Stephens, Jay](#)
To: [ATR-JudgmentTerminationComments](#)
Subject: U.S. v. The American Institute of Architects, Civil Action No. 992-72 (D.D.C. 1972): Proposed Termination of Final Judgment
Date: Wednesday, May 23, 2018 9:36:57 AM
Attachments: [2017 Code Update - 2017-03-30.docx](#)
[ANTITRUST Statement 09-2002.doc](#)

May 22, 2018

U.S. Department of Justice
Antitrust Division
Washington, DC

Re: Proposed Termination of Final Judgment in *U.S. v. The American Institute of Architects*, Civil Action No. 992-72 (D.D.C. 1972)

Dear Sirs and Madams:

We have learned that the Department of Justice is reviewing legacy antitrust judgments to determine which are candidates for termination. We have also learned that the final judgment in the above captioned matter is under review for that purpose. The American Institute of Architects supports termination of that judgment.

The final judgment in this case was entered on June 19, 1972. It enjoined and restrained the Institute from adopting any plan, program or course of action which prohibits its members from submitting price quotations for architectural services. It also ordered the Institute to:

amend its Standards of Ethical Practice, rules, bylaws, resolutions, and any other policy statements to eliminate therefrom any provision which prohibits or limits the submission of price quotations for architectural services by members of the [Institute] or which states or implies that the submission of price quotations for architectural services by members of the [Institute] is unethical, unprofessional, or contrary to any policy of the [Institute].

The Institute was also directed, among other things, to send a copy of the final judgment to each of its members and components within 60 days (and to each new member for a period of five years), and to “cause the publication in its Standards of Ethical Practice of a statement that the submission of price quotations for architectural services is not considered an unethical practice.”

To the best of our knowledge, all of the requirements of that judgment (as well as of a subsequent consent judgment, entered in 1990 and terminated in 2000) have long since been satisfied. In its introduction, the Institute’s Code of Ethics and Professional Conduct includes this language:

Statement in Compliance With Antitrust Law

The following practices are not, in themselves, unethical, unprofessional, or contrary to any policy of The American Institute of Architects or any of its components:

- (1) submitting, at any time, competitive bids or price quotations, including in circumstances where price is the sole or principal consideration in the selection of an architect;*
- (2) providing discounts; or*
- (3) providing free services.*

Individual architects or architecture firms, acting alone and not on behalf of the Institute or any of its components, are free to decide for themselves whether or not to engage in any of these practices. Antitrust law permits the Institute, its components, or Members to advocate legislative or other government policies or actions relating to these practices. Finally, architects should continue to consult with state laws or regulations governing the practice of architecture.

This language reflects the requirements contained in the 1990 consent judgment, but is also clearly relevant to a determination of whether the 1972 final judgment should be terminated. (A full copy of the Institute's Code of Ethics and Professional Conduct is attached, and may also be found at <http://aiad8.prod.acquia-sites.com/sites/default/files/2017-08/2017%20Code%20Update.pdf>.)

The statement in the Code of Ethics is consistent with the antitrust compliance policy adopted by the Institute in 2002, which declares the Institute's unwavering commitment to full compliance with federal and state antitrust laws:

It is the practice of The American Institute of Architects ("the Institute" or "the AIA") and its members to comply strictly with all laws, including federal and state antitrust laws, that apply to AIA operations and activities. Compliance with the letter and spirit of the antitrust laws is an important goal of the AIA, and is essential to maintaining the Institute's reputation for the highest standards of ethical conduct.

The antitrust compliance policy is binding on all the Institute's members, and applies as well to all the state organizations and local chapters chartered by the Institute. (For more on the Institute's antitrust compliance policy and program, see the attached document and see also <https://www.aia.org/pages/3316-antitrust-compliance>.)

Given all these factors – and, most importantly, the Institute's full and continuing commitment to strict antitrust compliance in all circumstances – we believe it appropriate that the 1972 final judgment be terminated.

We appreciate the opportunity to comment, and are prepared to provide such other information as you may require.

Sincerely,

Jay A. Stephens, Hon. AIA
Senior Vice President and General Counsel

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AIA

Ethics

FROM THE OFFICE OF GENERAL COUNSEL

2017 Code of Ethics and Professional Conduct

Preamble

Members of The American Institute of Architects are dedicated to the highest standards of professionalism, integrity, and competence. This Code of Ethics and Professional Conduct states guidelines for the conduct of Members in fulfilling those obligations. The Code is arranged in three tiers of statements: Canons, Ethical Standards, and Rules of Conduct:

- Canons are broad principles of conduct.
- Ethical Standards (E.S.) are more specific goals toward which Members should aspire in professional performance and behavior.
- **Rules of Conduct (Rule) are mandatory; violation of a Rule is grounds for disciplinary action by the Institute.** Rules of Conduct, in some instances, implement more than one Canon or Ethical Standard.

The **Code** applies to the professional activities of all classes of Members, wherever they occur. It addresses responsibilities to the public, which the profession serves and enriches; to the clients and users of architecture and in the building industries, who help to shape the built environment; and to the art and science of architecture, that continuum of knowledge and

creation which is the heritage and legacy of the profession.

Commentary is provided for some of the Rules of Conduct. That commentary is meant to clarify or elaborate the intent of the rule.

The commentary is not part of the **Code**. Enforcement will be determined by application of the Rules of Conduct alone; the commentary will assist those seeking to conform their conduct to the **Code** and those charged with its enforcement.

Statement in Compliance With Antitrust Law

The following practices are not, in themselves, unethical, unprofessional, or contrary to any policy of The American Institute of Architects or any of its components:

- (1) submitting, at any time, competitive bids or price quotations, including in circumstances where price is the sole or principal consideration in the selection of an architect;
- (2) providing discounts; or
- (3) providing free services.

Individual architects or architecture firms, acting alone and not on behalf of the Institute or any of its components, are free to decide for themselves whether or not to engage in any of these practices. Antitrust law permits the Institute, its components, or Members to advocate legislative or other government policies or actions relating to these practices. Finally, architects should continue to consult with state laws or regulations governing the practice of architecture.

CANON I

General Obligations

Members should maintain and advance their knowledge of the art and science of architecture, respect the body of architectural accomplishment, contribute to its growth, thoughtfully consider the social and environmental impact of their professional activities, and exercise learned and uncompromised professional judgment.

- E.S. 1.1** Knowledge and Skill:
Members should strive to improve their professional knowledge and skill.

- Rule 1.101** In practicing architecture, Members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.

Commentary: By requiring a "consistent pattern" of adherence to the common law standard of competence, this rule allows for discipline of a Member who more than infrequently does not achieve that standard.

Isolated instances of minor lapses would not provide the basis for discipline.

- E.S. 1.2** Standards of Excellence:
Members should continually seek to raise the standards of aesthetic excellence, architectural education, research, training, and practice.

- E.S. 1.3** Natural and Cultural Heritage:
Members should respect and help conserve their natural and cultural heritage while striving to improve the environment and the quality of life within it.

- E.S. 1.4** Human Rights:
Members should uphold human rights in all their professional endeavors.

- Rule 1.401** Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.

- E.S. 1.5** Design for Human Dignity and the Health, Safety, and Welfare of the Public:

Members should employ their professional knowledge and skill to design buildings and spaces that will enhance and facilitate human dignity and the health, safety, and welfare of the individual and the public.

- E.S. 1.6** Allied Arts and Industries: Members should promote allied arts and contribute to the knowledge and capability of the building industries as a whole.

CANON II

Obligations to the Public

Members should embrace the spirit and letter of the law governing their professional affairs and should promote and serve the public interest in their personal and professional activities.

- E.S. 2.1** Conduct:
Members should uphold the law in the conduct of their professional activities.

- Rule 2.101** Members shall not, in the conduct of their professional practice, knowingly violate the law.

Commentary: The violation of any law, local, state or federal, occurring in the conduct of a Member's professional practice, is made the basis for discipline by this rule. This includes the federal Copyright Act, which prohibits copying architectural works without the permission of the copyright owner. Allegations of violations of this rule must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

Rule 2.102 Members shall neither offer nor make any payment or gift to a public official with the intent of influencing the official's judgment in connection with an existing or prospective project in which the Members are interested.

Commentary: This rule does not prohibit campaign contributions made in conformity with applicable campaign financing laws.

Rule 2.103 Members serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment.

Rule 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Commentary: This rule addresses serious misconduct whether or not related to a Member's professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

Rule 2.105 If, in the course of their work on a project, the Members become aware of a decision taken by their employer or client which violates any law or regulation and which will, in the Members' judgment, materially affect adversely the safety to the public of the finished project, the Members shall:

- (a) advise their employer or client against the decision,
- (b)) refuse to consent to the decision, and
- (c)) report the decision to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations, unless the Members are able to cause the matter to be satisfactorily resolved by other means.

Commentary: This rule extends only to violations of the building laws that threaten the public safety. The obligation under this rule applies only to the safety of the finished project, an obligation coextensive with the usual undertaking of an architect.

Rule Members shall not counsel or

2.106 assist a client in conduct that the architect knows, or reasonably should know, is fraudulent or illegal.

E.S. 2.2 Public Interest Services:
Members should render public interest professional services, including pro bono services, and encourage their employees to render such services. Pro bono services are those rendered without expecting compensation, including those rendered for indigent persons, after disasters, or in other emergencies.

E.S. 2.3 Civic Responsibility:
Members should be involved in civic activities as citizens and professionals, and should strive to improve public appreciation and understanding of architecture and the functions and responsibilities of architects.

Rule 2.301 Members making public statements on architectural issues shall disclose when they are being compensated for making such statements or when they have an economic interest in the issue.

CANON III

Obligations to the Client

Members should serve their clients competently and in a professional manner, and should exercise unprejudiced and unbiased judgment when performing all professional services.

E.S. 3.1 Competence:
Members should serve their clients in a timely and competent manner.

Rule 3.101 In performing professional services, Members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.

Rule 3.102 Members shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.

Commentary: This rule is meant to ensure that Members not undertake projects that are beyond their professional capacity. Members venturing into areas that require expertise they do not possess may obtain that expertise by additional education, training, or through the retention of consultants with the necessary expertise.

Rule 3.103 Members shall not materially alter the scope or objectives of a project without the client's consent.

E.S. 3.2 Conflict of Interest:

Members should avoid conflicts of interest in their professional practices and fully disclose all unavoidable conflicts as they arise.

Rule 3.201 A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

Commentary: This rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities and the interest of others. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.

Rule 3.202 When acting by agreement of the parties as the independent interpreter of building contract documents and the judge of contract performance, Members shall render decisions impartially.

Commentary: This rule applies when the Member, though paid by the owner and owing the owner loyalty, is nonetheless required to act with impartiality in fulfilling the architect's professional responsibilities.

E.S. 3.3 Candor and Truthfulness:
Members should be candid and truthful in their professional communications and keep their clients reasonably informed about the clients' projects.

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members' services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.

E.S. 3.4 Confidentiality:
Members should safeguard the trust placed in them by their clients.

Rule 3.401 Members shall not knowingly disclose information that would adversely affect their client or that they have been asked to maintain in confidence, except as otherwise allowed or required by this Code or applicable law.

Commentary: To encourage the full and open exchange of information necessary for a successful professional relationship, Members must recognize and respect the sensitive nature of confidential client communications. Because the law does not recognize an architect-client privilege, however, the rule permits a Member to reveal a confidence when a failure to do so would be unlawful or contrary to another ethical duty imposed by this Code.

CANON IV

Obligations to the Profession

Members should uphold the integrity and dignity of the profession.

E.S. 4.1 Honesty and Fairness:
Members should pursue their professional activities with honesty and fairness.

Rule 4.101 Members having substantial information which leads to a reasonable belief that another Member has committed a violation of this Code which raises a serious question as to that Member's honesty, trustworthiness, or fitness as a Member, shall file a complaint with the National Ethics Council.

Commentary: Often, only an architect can recognize that the behavior of another architect poses a serious question as to that other's professional integrity. In those circumstances, the duty to the professional's calling requires that a complaint be filed. In most jurisdictions, a complaint that invokes professional standards is protected from a libel or slander action if the complaint was made in good faith. If in doubt, a Member should seek counsel before reporting on another under this rule.

Rule 4.102 Members shall not sign or seal drawings, specifications, reports, or other professional work for which they do not have responsible control.

Commentary: Responsible control means the degree of knowledge and supervision ordinarily required by the professional standard of care. With respect to the work of licensed consultants, Members may sign or seal such work if they have reviewed it, coordinated its preparation, or intend to be responsible for its adequacy.

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.

E.S. 4.2 Dignity and Integrity:
Members should strive, through their actions, to promote the dignity and integrity of the profession, and to ensure that their representatives and

employees conform their conduct to this Code.

Rule 4.201 Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.

Commentary: This rule is meant to prevent Members from claiming or implying credit for work which they did not do, misleading others, and denying other participants in a project their proper share of credit.

Rule 4.202 Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform their conduct to this Code.

Commentary: What constitutes "reasonable efforts" under this rule is a common sense matter. As it makes sense to ensure that those over whom the architect exercises supervision be made generally aware of the Code, it can also make sense to bring a particular provision to the attention of a particular employee when a situation is present which might give rise to violation.

CANON V

Obligations to Colleagues

Members should respect the rights and acknowledge the professional aspirations and contributions of their colleagues.

E.S. 5.1 Professional Environment:
Members should provide their associates and employees with a suitable working environment, compensate them fairly, and facilitate their professional development.

E.S. 5.2 Intern and Professional Development:
Members should recognize and fulfill their obligation to nurture fellow professionals as they progress through all stages of their career, beginning with professional education in the academy, progressing through internship and continuing throughout their career.

Rule 5.201 Members who have agreed to work with individuals engaged in an architectural internship program or an experience requirement for licensure shall reasonably assist in proper and timely documentation in accordance with that program.

E.S. 5.3 Professional Recognition:
Members should build their professional reputation on the merits of their own service and performance and should recognize

and give credit to others for the professional work they have performed.

Rule 5.301 Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

Rule 5.302 Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm's work, whether or not performed by the Member.

Rule 5.303 A Member shall not unreasonably withhold permission from a departing employee or partner to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employee or partner that are not confidential.

Commentary: A Member may impose reasonable conditions, such as the payment of copying costs, on the right of departing persons to take copies of their work.

CANON VI

Obligations to the Environment

Members should promote sustainable design and development principles in their professional activities.

E.S. 6.1 Sustainable Design:
In performing design work, Members should be environmentally responsible and advocate sustainable building and site design.

E.S. 6.2 Sustainable Development:
In performing professional services, Members should advocate the design, construction, and operation of sustainable buildings and communities.

E.S. 6.3 Sustainable Practices:
Members should use sustainable practices within their firms and professional organizations, and they should encourage their clients to do the same.

RULES OF APPLICATION, ENFORCEMENT, AND AMENDMENT

Application

The **Code of Ethics and Professional Conduct** applies to the professional activities of all members of the AIA.

Enforcement

The Bylaws of the Institute state procedures for the enforcement of the **Code of Ethics and Professional Conduct**. Such procedures provide that:

- (1) Enforcement of the **Code** is administered through a National Ethics Council, appointed by the AIA Board of Directors.
- (2) Formal charges are filed directly with the National Ethics Council by Members, components, or anyone directly aggrieved by the conduct of the Members.
- (3) Penalties that may be imposed by the National Ethics Council are:
 - (a) Admonition
 - (b) Censure
 - (c) Suspension of membership for a period of time
 - (d) Termination of membership.
- (4) Appeal procedures are available.
- (5) All proceedings are confidential, as is the imposition of an admonishment; however, all other penalties shall be made public.

Enforcement of Rules 4.101 and 4.202 refer to and support enforcement of other Rules. A violation of Rules 4.101 or 4.202 cannot be established without proof of a pertinent violation of at least one other Rule.

Amendment

The **Code of Ethics and Professional Conduct** may be amended by the convention of the Institute under the same procedures as are necessary to amend the Institute's Bylaws. The **Code** may also be amended by the AIA Board of Directors upon a two-thirds vote of the entire Board.

2017 Edition. This copy of the **Code of Ethics is current as of February 2017. Contact the General Counsel's Office for further information at (202) 626-7311.*

**THE AMERICAN INSTITUTE OF ARCHITECTS
ANTITRUST COMPLIANCE STATEMENT AND
PROCEDURES**

September 2002

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I. INTRODUCTION

It is the practice of The American Institute of Architects (“the Institute” or “the AIA”) and its members to comply strictly with all laws, including federal and state antitrust laws, that apply to AIA operations and activities. Compliance with the letter and spirit of the antitrust laws is an important goal of the AIA, and is essential to maintaining the Institute’s reputation for the highest standards of ethical conduct.

The procedures discussed below update the AIA’s continuing antitrust compliance program and are to be observed by each of you – AIA officers and employees, AIA members, and other persons – who may be involved in any way in the AIA’s operations and activities. While the AIA General Counsel’s Office has been assigned to oversee the AIA’s antitrust compliance program, the program cannot work unless each of us does our part.

II. THE ANTITRUST LAWS: A BASIC FRAMEWORK

Antitrust laws are designed to promote vigorous and fair competition, and to provide American consumers with the best combination of price and quality. These procedures focus mainly on the federal antitrust and trade regulation laws created by the Sherman Act, Clayton Act, Robinson-Patman Act and Federal Trade Commission Act. Most states and the District of Columbia have their own antitrust laws, which frequently (although not always) parallel the federal laws.

The U.S. Department of Justice is authorized to prosecute Sherman Act violators as criminal felons, who may be severely fined and, in the case of individuals, imprisoned. In addition, the Justice Department, state attorneys general and private parties may bring civil suits and recover three times (treble) their actual damages, court costs and (in private suits) their attorneys’ fees from corporations and individuals who have violated the federal antitrust laws. The Federal Trade Commission has its own statutory authority to enforce antitrust laws through civil and administrative proceedings.

III. POSSIBLE ANTITRUST VIOLATIONS TO AVOID

1. Agreements That Restrain Competition - Section 1 of the Sherman Act

The most common antitrust violations of which you should be aware fall within Section 1 of the Sherman Act. They result from agreements – typically with competitors, customers or suppliers – that unreasonably restrain competition. Thus, the antitrust laws prohibit the AIA and its members from *agreeing* to do certain things that they could legally do if they acted *independently*.

Any type of agreement, understanding or arrangement between competitors, whether written or oral, formal or informal, express or implied, that limits competition is subject to antitrust scrutiny. Moreover, any attempt to reach such an agreement may be unlawful, even if it is unsuccessful.

2. Some Troublesome Agreements

The courts have found that certain types of agreements always (or almost always) violate the antitrust laws. They include agreements of the kinds discussed here.

Price-fixing and bid-rigging agreements. Any agreement between competitors on prices charged to others for products or services violates the antitrust laws. Every direct price-fixing agreement is illegal, whether it is meant to raise, lower or just stabilize prices. Agreements may be illegal as well even if they only indirectly affect prices because they involve such things as discounts, promotional allowances, standardization of customer or delivery services, or uniform credit terms and billing practices. It is also illegal for competitors to agree on the prices they will *pay* for products or services sold by other persons, or to engage in collusive bidding practices (or “bid rigging”).

Agreements to allocate markets, customers, territories or products. It is illegal for competitors to agree to divide or allocate customers or territories. An agreement among competitors is also illegal if it provides that they will refrain from selling a certain product generally, or in any geographic territory or to any category of customer.

Group boycotts and collective refusals to deal. Agreements among independent concerns that they will boycott or refuse to buy from particular suppliers or sell to particular customers are generally prohibited by the antitrust laws. This does not necessarily preclude sharing certain information about a supplier or customer (*e.g.*, concerning its credit history) so long as there is no discussion on whether to deal with it.

Agreements to control production. Agreements among competitors to increase or restrict services or production levels are always problematic under the antitrust laws. The same is true of agreements among competitors to limit the quality of production, restrict the products or services sold to a particular customer, refrain from introducing new products and services or eliminating old ones, or accelerate the introduction or withdrawal of a product or service.

Tying Arrangements. A “tie-in” or “tying” arrangement permits a buyer to purchase one (tying) product or service only if it agrees to buy a second, distinct (tied) product or service from the seller. These types of agreements should be avoided.

ACTIVITIES THAT ILLEGALLY RESTRAIN COMPETITION

- **AIA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas:**
 - ◇ **The AIA's or members' prices for products or services**
 - ◇ **Allocations of markets, customers, territories or products**
 - ◇ **Collective refusals to deal with anyone**
 - ◇ **Limitations on production**
 - ◇ **Tying arrangements**
- **To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AIA-related operations, events or other activities *without the prior approval of counsel*.**

3. Other Types of Agreements That Also May Raise Concerns Under the Antitrust Laws

Here are some examples – though not a complete list – of agreements whose legality depends on the circumstances involved.

Exclusive Dealing. Exclusive dealing arrangements come in various forms. Some might require a customer to sell exclusively the products of a particular company, or coerce a supplier into refusing to sell to its customer's competitors. Others might compel a customer to purchase all of its requirements for a particular product or service from a single supplier.

Reciprocity. In a reciprocal dealing arrangement, a customer makes purchases from a supplier only on the condition that the supplier will buy products or services from the customer. Such reciprocal arrangements are particularly troublesome when they are openly or implicitly coerced.

Product standardization. Competitors may create lawful agreements to establish industry product standards. Those agreements may cause problems under the antitrust laws, however, if they have an anticompetitive effect (*e.g.*, where standardization makes it easier for competitors to set common prices).

Resale price agreements. An agreement between a seller and a customer on the price at which the customer will resell a product is frequently problematic. The seller may, however, suggest a

resale price so long as it is completely clear that the customer is free to accept or reject the suggestion, and will not be penalized if it decides to disregard the suggestion.

**ACTIVITIES THAT ALSO MAY BE ILLEGAL,
DEPENDING ON THE CIRCUMSTANCES**

- **AIA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas *without the prior approval of counsel*:**
 - ◇ **Exclusive dealing arrangements**
 - ◇ **Reciprocal sales and purchase arrangements**
 - ◇ **Product standardization**
 - ◇ **The prices at which products or services should be resold**
- **To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AIA-related operations, events or other activities *without the prior approval of counsel*.**

4. Other Conduct That May Violate the Antitrust Laws Even Without an Agreement of Any Type

You should also be aware of antitrust law violations that may take place even where there is no agreement among competitors or anyone else. The most common violations of that type are briefly discussed here.

Monopolization. The law of monopolization (including attempts to monopolize and agreements to monopolize) is extremely complicated. Basically, when any enterprise enjoys a strong market position for a particular product, it should be concerned about questions of monopolization. The law of monopolization often comes into play in mergers or acquisitions for companies that actually compete, or could compete with each other. No enterprise should take actions that might be viewed as evidence of an intent to acquire or maintain monopoly power in a particular market, to drive a particular competitor out of business, or to prevent somebody from entering the market.

Price Discrimination. The Robinson-Patman Act and some state antitrust laws restrict a seller from charging different prices for its goods to competing customers at the same point in time. Those laws also forbid sellers in certain circumstances to discriminate when they offer promotional materials, services or other inducements to individual customers in an effort to have the customers engage in in-house promotions or advertising. Buyers are in turn prohibited from knowingly inducing or receiving a discriminatory price, promotional allowance, or service.

These general prohibitions have a number of exceptions, which are too complex to be discussed here.

Unfair Competition. The Federal Trade Commission Act (also called the “FTC Act”) prohibits all “unfair methods of competition” and “unfair or deceptive acts or practices.” The FTC Act covers antitrust violations like those discussed above, but also forbids conduct that falls short of those violations. The FTC Act prohibits all forms of deceptive or misleading advertising and trade practices, such as disparaging a competitor’s product, harassing a customer or competitor, and stealing trade secrets and customer lists.

Contact legal counsel for advice in any situations that may involve:

- ◇ **Attempts to eliminate competition**
- ◇ **Price discrimination**
- ◇ **Advertising of products or services**
- ◇ **Potentially unfair business practices (e.g., acquiring customer lists)**

IV. ANTITRUST MATTERS OF PARTICULAR INTEREST TO PROFESSIONAL SOCIETIES

A number of antitrust cases against professional societies and trade associations have focused on situations that go to the heart of what those organizations are about.

Membership. Because a professional society or a trade association by its very nature provides certain commercial and other benefits to its members, the denial of membership to qualified competitors of the members could violate antitrust laws. Membership should be open to all who satisfy basic membership requirements, and any decision to deny membership or expel a member should be reviewed with counsel. All persons in any class of membership should have an equal opportunity to participate in AIA activities and benefits. In addition, certain programs and activities may need to be opened to non-members if their exclusion would put them at an unreasonable competitive disadvantage to members.

Collection and Dissemination of Data. Statistical data may obviously be compiled for legitimate purposes. Statistical information also may cause problems from an antitrust standpoint, however, if their use somehow harms competition. This might happen, for instance, if statements in AIA publications were to suggest what production, price, or specific market demand should or would be in the future. Broadly speaking, the farther removed the data are from prices and costs, the less company-specific they are, the more historical they are, and the wider their public dissemination is, the less likely it is that they will raise antitrust problems. As a general rule, particular market-sensitive data supplied by individual members should never be discussed or disseminated beyond the AIA without advice of counsel.

Codes, Standards and Certification Programs. Reasonable industry codes, standards and certification programs may promote quite valid interests, including the protection of safety, health and the environment and the maintenance of high standards of ethics and conduct. You should nonetheless be alert for anticompetitive effects that a particular standard may have. For example, a product standard that is unreasonably biased in favor of one manufacturer's product at the expense of another's may raise significant antitrust problems. Care should therefore be used both in creating and applying codes, standards and certification criteria, and in influencing other organizations as they do so.

Marketing and Communications. Like the other activities discussed above, marketing and communications serve valid interests, but can raise antitrust problems under some circumstances. Be careful that all advertising, announcements, and other communications that might affect competition are accurate, and are in no way deceptive or misleading. Cooperative advertising programs may be suspect if they discriminate and benefit certain members at the expense of their competitors.

Government Relations. There is a constitutional right to petition legislatures and government agencies for action, and, if properly undertaken, such activity is not subject to the antitrust laws. The right to petition, however, does not provide unlimited antitrust protection. If the activity in question is not really designed to achieve government action but rather amounts to a sham used to injure competition, for example, it may raise serious antitrust problems. Moreover, activity is not immunized from the antitrust laws simply because a government representative encourages and happens to participate in it.

V. SOME PRACTICAL GUIDELINES ON PREVENTING PROBLEMS AT MEETINGS, IN RECORDS, AND IN CONTACTS WITH OTHERS

Meetings, communications and contacts that touch on antitrust matters present special challenges. A simple example will illustrate this. Suppose that competitors were to discuss their prices at a meeting or in a document, and that their prices increased shortly afterward. A jury might view this as evidence that their discussions led to an agreement on pricing, and thus violated the antitrust laws. In a case like that, the mere *appearance* of illegality – even when the parties may *in fact* have done nothing wrong – can cause serious problems. The guidelines that follow are designed to help you not only comply with the antitrust laws, but also avoid even the appearance of impropriety.

Meetings. AIA meetings regularly bring together members and others who are potential or actual competitors. It is therefore important that certain ground rules be followed to eliminate any suspicion that a particular meeting might be used for anticompetitive purposes:

- ◇ ***Do*** prepare an agenda, and have AIA counsel review it before the meeting.
- ◇ ***Do*** provide a copy of “**The American Institute of Architects: Antitrust Compliance Guidelines**” to every participant at the meeting.
- ◇ ***Do*** have an AIA staff member attend the meeting.

- ◇ **Do** invite legal counsel to attend if the meeting might involve matters having to do with competition.
- ◇ **Do** follow the agenda at your meeting, with departures from the agenda only if counsel approves.
- ◇ **Do** keep accurate minutes, and have counsel review them before they are put into final form and circulated.
- ◇ **Do not** discuss any subjects that might raise antitrust concerns (including prices, market allocations, refusals to deal, and the like) unless you have received specific clearance from counsel in advance. If somebody begins discussing a sensitive subject, **do not allow the discussion to continue**. If the discussion does continue, **do not allow the meeting to continue**.

When members get together and talk before or after formal meetings, there should be no discussions that raise antitrust concerns even in such informal settings.

Records. When we talk about “records,” we are referring to any of the various communications people record in some tangible form every day -- in documents, e-mail, videotapes, audio recordings (such as voice mail), and the like. These “records” are sometimes inaccurate, often less precise or artful than we would like, and all too frequently subject to misinterpretation. You should prepare every record with the thought that it might some day have to be produced to government officials or plaintiffs’ lawyers, who will interpret your language in the worst possible way. The following guidelines may help you avoid problems in matters involving competition:

- ◇ **Do** avoid creating unnecessary records.
- ◇ **Do** use language that is clear, simple and accurate.
- ◇ **Do** avoid language that might be misinterpreted to suggest that the AIA condones or is involved in any anticompetitive behavior.
- ◇ **Do**, as much as possible, limit yourself to facts and avoid offering opinions.
- ◇ **Do not** use joking or aggressive language (*e.g.*, “let’s kill our competitors”).
- ◇ **Do not** use language that might arouse suspicion (*e.g.*, “For limited distribution” or “Destroy after reading”).
- ◇ **Do not** speculate about the legality of specific conduct.
- ◇ **Do not** violate the AIA’s record management policy when deciding how to handle, maintain or dispose of any record.
- ◇ **Do not** hesitate to consult counsel about any non-routine correspondence requesting an AIA member to participate in projects or programs, submit data for such activities, or

otherwise join other members in AIA actions.

Outside contacts. Whenever you have contact with outside parties on antitrust matters, always keep in mind that even completely innocent behavior may be misinterpreted. If a government representative, a private attorney or investigator, or any other outside person contacts you for information that might relate in some way to antitrust subjects, tell that person that you are not authorized to provide the information but will have an authorized person respond. You should then immediately contact legal counsel.

VI. RESPONSIBILITY FOR COMPLIANCE, MONITORING AND ENFORCEMENT

Responsibility for Antitrust Compliance. While the General Counsel's Office will provide guidance on antitrust matters, furnish training as appropriate, and answer questions, it is ultimately your responsibility to assure that your actions with the AIA comply with the antitrust laws. You are expected to avoid all discussions and activities which may involve improper subject matter or procedures – and this includes such things as agreeing on prices, on how to allocate markets or customers, on placing limits on production, and on refusing to deal with certain suppliers or customers – and to avoid even the appearance of impropriety.

Communicating Antitrust Statement and Procedures. The General Counsel's Office and AIA Human Resources will distribute a copy of these procedures to each AIA officer and employee. AIA Component Relations and AIA Membership Services will assist in providing copies of these procedures to AIA components and to members whose responsibilities with the Institute might require knowledge of the antitrust laws. You should promptly sign and return the acknowledgment in the attached form (Attachment A).

Communicating the AIA's Antitrust Compliance Statement and Procedures. The General Counsel's Office, in conjunction with AIA Human Resources and others, will make presentations as appropriate on compliance with the antitrust laws to the Institute's employees and to AIA components and members to the extent their activities might bear on the AIA's compliance with the antitrust laws. In addition, all AIA officers and employees and AIA members are encouraged to contact the General Counsel's Office at any time with questions they may have concerning antitrust compliance.

Compliance Monitoring and Enforcement. The General Counsel's Office and AIA Human Resources will monitor and audit AIA operations and activities as appropriate to help ensure compliance with these procedures and the antitrust laws in general. They will also promptly investigate any conduct that is reported or otherwise suspected to violate the antitrust laws. Any such violations may result in immediate disciplinary action, up to and including termination of membership or (for AIA employees) employment.

The AIA recognizes that its own employees are an important source of information about possible antitrust violations in connection with the AIA's activities. It therefore requires that employees promptly report any suspected violations of the antitrust laws. Such reports may be made anonymously. Only persons with a need to know about such reports will be advised of them. Intimidating, retaliating against or imposing any form of retribution on any employee for

reporting suspected violations of the antitrust laws may result in disciplinary action, including possible termination of membership or employment, as the case may be.

VII. CONCLUSION

If you have a question about whether any of the AIA's operations or activities may violate the antitrust laws, contact the General Counsel's Office. We look forward to working with you to assure that the AIA, its officers and employees, and its members strictly comply with both the letter and the spirit of those laws in all of our activities with the AIA

The American Institute of Architects
General Counsel's Office
1735 New York Avenue, N.W.
Washington, D.C.
202/626-7300
September 2002

**THE AMERICAN INSTITUTE OF ARCHITECTS
ANTITRUST COMPLIANCE STATEMENT AND
PROCEDURES**

ATTACHMENT A

I have received and read a copy of “The American Institute of Architects: Antitrust Compliance Statement and Procedures,” and agree to comply with the guidance shown there.

Signed: _____

Name (printed): _____

Date: _____

**Please sign and complete this form, and return it to
the AIA Office of General Counsel.**